

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

ROOSEVELT DOMOND
Plaintiff Below,
APPELLEE

VS

KEVIN APGAR
CRYSTAL APGAR
Defendant Below,
APPELLANT

§
§
§
§
§
§
§
§
§
§

C.A. No. JP17-18-007023

TRIAL DE NOVO

Submitted: February 11, 2019

Decided: February 22, 2019

APPEARANCES:

Plaintiff self-represented

Defendants self-represented

Alan G Davis, Chief Magistrate

Sheila G Blakely, Deputy Chief Magistrate

William P Wood, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-18-007023

ROOSEVELT DOMOND VS KEVIN APGAR ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

Plaintiff, Roosevelt Domond, brought this action on November 13, 2018, seeking possession of a rental unit and back rent, including utilities. After a couple of pre-trial matters, including one in which the Court referred the property to the County Constable for examination of the tenement, trial was eventually held on January 17, 2019. The single Justice of the Peace ruled in favor of the Plaintiff on January 23, 2019, and Defendants, Kevin and Crystal Apgar, filed a timely appeal and instituted a counterclaim to recover all rent previously paid to the Plaintiff.

The Court scheduled this case for a three judge panel on February 11, 2019. Chief Magistrate Davis, Deputy Chief Magistrate Blakely and Judge Wood heard the appeal. Prior to trial, the parties agreed that possession would be turned over to the landlord by February 18, 2019. For the reasons stated below the Court finds in favor of the Plaintiff on the question of damages, with an abatement for the landlord's failure to provide essential services, but awards nothing for the utility claim.

Facts

Tenants began renting an apartment at 10977 Trussum Pond Road near Laurel on February 1, 2018. Tenants were not given a copy of the landlord-tenant code at that time. In reviewing the apartment with the father of Mr. Apgar, the tenants were given assurances that certain items that needed to be addressed would be taken care of by the landlord. After moving in, the tenants spent some time painting and making minor improvements.

There were, however, major problems with the apartment. The gas furnace in the apartment did not function because the gas had not been turned on. The septic system was particularly spotty. Frequently, it did not flush any solids and the tenants had to resort to disposing of their waste in plastic bags.

Throughout the existence of these problems, both parties testified that they maintained a good relationship. It appears that the breaking point came in July when the neighboring unit sprayed for bedbugs and the bugs found their way into the Apgar's apartment. Due to the mounting issues with the property, the tenants discontinued paying rent in August, paying only a partial amount that month and nothing since.

Plaintiff claims for that back rent and further includes a claim for a water bill. At trial it was revealed that the landlord received a single bill for the multi-unit tenement and then would bill the individual tenants for a pro-rata portion of the original bill. It was unclear at trial whether the defendants ever paid anything for the water, but plaintiff alleged that the tenants' unpaid portion of the bill amounted to \$508.

Defendants filed a counterclaim for return of all rent monies paid due to the fact that the property was not registered with the County as a rental. They also sought to defend their lack of payment based on the failure of the landlord to provide essential services, specifically heat and a working septic system.

Discussion

Landlords and tenants each have certain rights and responsibilities under the landlord-tenant code. The code is intended to provide baseline assurances for the conduct of the relationship between the parties. Most basic of these requirements are that the tenant will pay the rent when due and the landlord will provide a habitable residence in return. Unfortunately, in this case, neither of these minimums were met.

Mr. Domond has not been a good landlord in this instance. Despite his claims at trial that the tenants wanted to "hold off" on getting the gas turned on, it is specifically his requirement to ensure that heat is available. 25 Del. C. §5308(a). Similarly, a working waste disposal system is a bare minimum standard for a rental property. 25 Del. C. §5305(a)(5). The Court is convinced, and finds by a preponderance of the evidence, that Plaintiff failed to provide essential services to this leased premise, and the tenants were therefore entitled to withhold two-thirds of the accruing rent. 25 Del.C. §5308(a)(2). Because the tenants were not given a copy of the landlord tenant code at the commencement of their tenancy the Court excuses their failure to give written notice of the deficiency as required by the statute before withholding rent. 25 Del. C. §5118.

Despite the landlord's failures, the code does not provide for the tenant to simply refuse to pay rent when placed in a rental unit that fails to meet minimum requirements. The right to self-help in the code is exceedingly limited. The primary remedy is with the Court. 25 Del. C. §5177. While there is some availability to withhold a portion of rent when the landlord has failed to make repairs, these tenants have not met the requirements of the code to allow them to do so. Nor does the mere lack of a rental license for the premise negate the responsibility to pay rent under the code. The Court therefore finds, by a preponderance of the evidence, that the tenants inappropriately withheld rent and rules that their counterclaim is without merit.

Finally, the Court finds that Mr. Domond is not entitled to any payment for the water bill as a part of rent because he has failed to comply with the requirements of 25 Del. C. §5312, which mandate that a landlord may only charge a tenant for utility services actually used and that are separately metered.

Judgment

The parties agreed to transfer possession no later than February 18, 2019. The Court retains jurisdiction over the issue of possession only for the purpose of effecting that agreement. The Court finds in favor of the Plaintiff on the question of back rent and on the defendants' counterclaim. The Court further finds in favor of the Defendants on the questions of whether the landlord withheld essential services and the inclusion of the water bill as part of rent. As a result of those combined findings, the Court has determined that a total of \$2880.06 of back rent is due up to and including February 18, 2019. Because of the failure to provide the tenants with essential services, the Court gives an abatement of two-thirds to the tenants. As such, the Court enters a judgment in the amount of \$959.92 in favor of the Plaintiff, plus court costs and post-judgment interest at the legal rate.

IT IS SO ORDERED 22nd day of February, 2019

/s/Alan G Davis for the (SEAL)
For the Three Judge Panel



VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>